

ST 01-0002-PLR 01/18/2001 MANUFACTURING MACHINERY & EQUIPMENT

Machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease is exempt from Retailers' Occupation Tax and Use Tax liability. See 86 Ill. Adm. Code 130.330. (This is a PLR.)

January 18, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of November 29, 2000. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

We are a manufacturer within the state of Illinois and request a Private Letter Ruling on whether an electrical upgrade at our facility qualifies for the Manufacturer's Purchase credit under the following circumstances:

Approximately 95% of the electricity used at our plant is used directly for operating tax-exempt machinery and equipment used in the production of our dairy products. The balance of 5% electricity is used for our offices and computers.

This electrical upgrade was necessary because we had experienced several switchgear failures and power outages in the recent past due to possible overloading caused by the initial surge during startup of the large electric motors and compressors used in our facility. We also experienced an electrical fire which prompted our contact with BUSINESS for this upgrade.

Attached is a copy of the estimate detailing what work was to be performed and the related costs. We did accept this quote and paid \$252,932 to BUSINESS in full for materials and labor associated with the upgrade.

The tax period in question is for the year 2000. The work was completed in February of 2000 and paid for at that time. There is no audit or litigation pending with the Department at this time that would effect your decision.

To the best of my knowledge neither I nor COMPANY have previously asked for a letter ruling on this particular issue or asked for a letter ruling and withdrew the request.

The attached quote from BUSINESS justifies why this electrical upgrade was necessary at our facility. As the machinery and equipment used in the plant qualifies for the Manufacturer's Purchase Credit we believe this upgrade should also qualify. We do not know of any authority at this time that would dispute this claim.

Please advise us whether this major upgrade to our electrical power source will qualify for the Manufacturer's Purchase Credit in the form of a Private Letter Ruling at your earliest convenience.

Your letter asks whether the purchase of the electrical upgrade equipment from BUSINESS described in the attachments to your letter qualifies for the Manufacturer's Purchase Credit (MPC). MPC is earned on the purchase of manufacturing machinery and equipment that qualifies for the Manufacturing Machinery and Equipment Exemption. Machinery and equipment used primarily (over 50% of the time) in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease qualifies for the Manufacturing Machinery and Equipment Exemption and is exempt from Retailers' Occupation Tax and Use Tax liability. See the enclosed copy of 86 Ill. Adm. Code 130.330.

Your letter states that the equipment required for the electrical upgrade listed in the attachment to your letter is necessary because of switchgear failures and power outages that were likely due to the use of the electric motors and compressors used in COMPANY's manufacturing facility. Your letter also indicated that approximately 95% of the electricity used at that facility is used directly for operating tax exempt manufacturing machinery and equipment in the production of dairy products.

Based upon these representations, the electrical upgrade equipment described in your letter that is used in the operation of COMPANY's manufacturing facility located in CITY, Illinois qualifies for the Manufacturing Machinery and Equipment Exemption from Retailers' Occupation Tax and Use Tax liability.

Because the electrical upgrade equipment qualifies for the Manufacturing Machinery and Equipment Exemption, COMPANY earns MPC on the purchase of that equipment as long as the earning of that MPC is properly reported on a timely filed ST-16 Annual Report of Manufacturer's Purchase Credit Earned. See subsection (e) of the enclosed copy of 86 Ill. Adm. Code 130.331.

The amount of MPC earned on purchases of qualifying manufacturing machinery and equipment from servicemen are calculated in the manner provided in Section 3-70 of the Service Use Tax Act.¹ You have provided me with copies of invoices from BUSINESS regarding the electrical upgrade contract that total \$256,870.00. These invoices do not separately state a selling price for the materials or equipment. Therefore, the amount of MPC earned on the purchase of the electrical upgrade equipment is calculated based upon 50% of the total amount of those bills (\$256,870.00) which equals \$128,435.00. This amount is considered the purchase price of the electrical upgrade equipment for purposes of calculating MPC earned on that purchase.

The amount of MPC earned on purchases made after July 1, 1997 is based upon 50% of the amount of tax that would have been incurred on the purchase of that machinery or equipment if the

¹ 35 ILCS 110/3-70.

Manufacturing Machinery and Equipment Exemption had not been available. Therefore, the amount of MPC earned on the purchase of the electrical upgrade equipment is determined by multiplying the purchase price (\$128,435.00) by 50% and then multiplying that amount by the 6.25% rate of tax. We have calculated the total amount of MPC earned by COMPANY on the purchase of the electrical upgrade equipment to be \$4,014.

You have asked in a telephone conversation if the Department would also provide you with the date on which the MPC was earned. You informed me that the invoices from BUSINESS were faxed to COMPANY in January of 2000. You also stated that no other invoices or bills regarding the contract had been received prior to that time and that this was in keeping with COMPANY's contractual agreements that no payments were required under the contract until the work was completed. We have noted that two out of the three invoices reference invoice dates in 1999. These appear to be progress billings typically associated with contracts that are performed over an extended period of time. However, provision 4.1 of the contract attached to your letter states that BUSINESS is required to submit to COMPANY an invoice in the amount of \$252,932.00 after completion of the work.² You also provided us with a computer print out listing when the checks were paid regarding the amounts due on those invoices. The printout lists the payment dates as both being in February of 2000. Subsection (a)(3) of Section 130.331 of the Department's rules regarding MPC provide that a qualifying purchase of manufacturing machinery and equipment is considered to take place as of the date of invoice of that qualifying manufacturing machinery and equipment. See the enclosed copy of 86 Ill. Adm. Code 130.331. Based upon this information and your assertion that the invoices for the contract were not sent until January of 2000, we believe that the MPC was earned on January 4, 2000 when the invoices for the contract price were faxed to COMPANY.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have questions regarding this Private Letter Ruling you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.

² You also informed us that the invoice in the amount of \$3,938.00 is for cost overruns that were not part of the original price listed in the contract.